

EXHIBIT “A”

**McMANIMON, SCOTLAND
& BAUMANN, LLC**

427 Riverview Plaza

Trenton, NJ 08611

(609) 695-6070

Andrea Dobin (adobin@msbnj.com)

Michele M. Dudas (msbnj.com)

Attorneys for Andrea Dobin,

Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

FRUTTA BOWLS FRANCHISING, LLC,

Debtor.

Chapter 11

Case No. 19-13230 (MBK)

Honorable Michael B. Kaplan, Chief USBJ

**ASSIGNMENT OF INTERESTS IN ASSETS OF FRUTTA BOWLS, LLC
AND FRUTTA BOWLS DISTRIBUTION, LLC TO ANDREA DOBIN,
CHAPTER 11 TRUSTEE FOR FRUTTA BOWLS FRANCHISING, LLC**

THIS ASSIGNMENT, effective as of August 14, 2020, is entered into by and between Andrea Dobin, the Chapter 11 Trustee (“Trustee”) for Frutta Bowls Franchising, LLC (“Debtor”), and Frutta Bowls, LLC (“Bowls”) and Frutta Bowls Distribution, LLC (“Distribution”) (where appropriate, Bowls and Distribution will be collectively referred to as the “Assignors”):

WHEREAS, on February 15, 2019, the Debtor commenced a voluntary Chapter 11 proceeding in the United States Bankruptcy Court for the District of New Jersey at Case No. 19-13230 (MBK) (the “Bankruptcy Case”); and

WHEREAS, Brooke Gagliano (“B. Gagliano”) and Patrick Gagliano (“P. Gagliano”) are the sole members of the Debtor; and

WHEREAS, B. Gagliano is the sole member of Bowls and Distribution; and

WHEREAS, on May 22, 2020, Andrea Dobin was appointed as Chapter 11 Trustee for the Debtor's Estate; and

WHEREAS, in July 2020, the Trustee entered into a settlement by and between B. Gagliano, P. Gagliano, Gagliano Enterprises, LLC and the Assignors which provides for, among other relief, the transfer of certain assets of BOWLS and the Assignors to the Chapter 11 Estate (the "Settlement"). The Settlement was approved by Order entered by the Honorable Michael B. Kaplan, Chief United States Bankruptcy Judge in the Bankruptcy Case on August 14, 2020. A copy of the Order approving the Settlement is annexed as **Exhibit "A"**; and

NOW, THEREFORE, the Assignors, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby enter into this Assignment with the Trustee pursuant to the Settlement and Order approving same:

1. BOWLS, doing business c/o 64 Village Center Drive, Freehold, New Jersey 07728, does hereby transfer, set over and assign any and all interests to the Trustee the following assets owned by BOWLS: a system relating to the establishment, development and operation of Frutta BOWLS businesses including certain know-how, trade secrets, copyrighted material (registered or unregistered) and trademarks, including the service mark "Frutta BOWLS" design (U.S. Reg. No. 5184834), word mark, "Frutta Bowl" (Serial No. 87593542 – application pending), and word mark "This is How I Frutta" (Serial No. 87574888 – application pending) and other unregistered trade names, trademarks, service marks, logos, trade dress, commercial symbols and proprietary rights.

2. Distribution, doing business c/o 64 Village Center Drive, Freehold, New Jersey 07728, does hereby transfer, set over and assign any and all interests to the Trustee any distribution rights, known or unknown, belonging to Distribution.

3. Nothing contained herein is an assignment or assumption of any liabilities of the Assignors by the Trustee and/or Debtor's bankruptcy estate.

4. This Assignment shall survive any conversion or dismissal of the Bankruptcy Case.

IN WITNESS WHEREOF, the Assignors have signed and sealed this Assignment on this 28 day of September, 2020.

FRUTTA BOWLS, LLC

By: 
BROOKE GAGLIANO
Managing Member

FRUTTA BOWLS DISTRIBUTION, LLC

By: 
BROOKE GAGLIANO
Managing Member

EXHIBIT “A”



Order Filed on August 14, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

**McMANIMON, SCOTLAND
& BAUMANN, LLC**
427 Riverview Plaza
Trenton, NJ 08611
(609) 695-6070
Andrea Dobin (adobin@msbnj.com)
Michele M. Dudas (mdudas@msbnj.com)
Counsel to Andrea Dobin, Chapter 11 Trustee

In re:

FRUTTA BOWLS FRANCHISING, LLC,

Debtor.

Case No. 19-13230 (MBK)

Chapter 11

Honorable Michael B. Kaplan, Chief U.S.B.J.

Hearing Date and Time:
August 13, 2020, at 10:00 a.m.

**ORDER APPROVING SETTLEMENT BETWEEN ANDREA DOBIN,
CHAPTER 11 TRUSTEE, AND FRUTTA BOWLS, LLC, BROOKE
GAGLIANO, PATRICK GAGLIANO, GAGLIANO ENTERPRISES, LLC,
AND FRUTTA BOWLS DISTRIBUTION, LLC, PURSUANT TO 11 U.S.C.
§ 105(a) AND FED. R. BANKR. P. 9019, AND FOR RELATED RELIEF**
(Revised as of August 13, 2020)

The relief set forth on the following pages, numbered two (2) through three (3), is hereby
ORDERED.

DATED: August 14, 2020

Honorable Michael B. Kaplan
United States Bankruptcy Judge

Debtor: Frutta Bowls Franchising, LLC
Case No.: 19-13230 (MBK)

Caption of Order: Order Approving Settlement Between Andrea Dobin, Chapter 11 Trustee and Frutta Bowls, LLC, Brooke Gagliano, Patrick Gagliano, Gagliano Enterprises, LLC and Frutta Bowls Distribution, LLC, Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019, and for Related Relief

THIS MATTER having been presented to the Court by McManimon, Scotland & Baumann, LLC, counsel to Andrea Dobin, the Chapter 11 Trustee (“Trustee”) for Frutta Bowls Franchising, LLC, Chapter 11 debtor (“Debtor”), upon the motion for entry of an Order approving the settlement reached between the Trustee, on the one hand, and Frutta Bowls, LLC (“Bowls”), Brooke Gagliano (“B. Gagliano”), Patrick Gagliano and Gagliano Enterprises, LLC (where appropriate, collectively, the “Settling Parties”), on the other hand, providing for the transfer of intellectual property owned by Bowls to the Debtor, in exchange for releases by the Trustee against the Settling Parties, pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019, and for related relief (“Motion”); and notice having been provided to counsel to Settling Parties; the Office of the United States Trustee; Debtor’s counsel; counsel to the Office Committee of Unsecured Creditors; and other parties-in-interest; any party having filed a Notice of Appearance; and other parties in interest as set forth in the Certificate of Service; and the Court having considered the pleadings filed by the Trustee in support of the Motion, the Limited Objection filed by Frutta Bowls Clemson, Frutta Bowls Seminole, Frutta Bowls Madison, Wisconsin, Frutta Bowls College Park, Maryland, Frutta Bowls New Brunswick and Frutta Bowls Aberdeen, the Limited Response filed by the Official Committee of Unsecured Creditors, and the Trustee’s Reply thereto, if any; and the settlement having been modified to also include Frutta Bowls Distribution, LLC (“Distribution”), a non-operational entity owned by B. Gagliano; and the Court having further reviewed the Certifications of the Trustee submitted in further support of the Motion; and for other good cause having been shown,

Debtor: Frutta Bowls Franchising, LLC
Case No.: 19-13230 (MBK)

Caption of Order: Order Approving Settlement Between Andrea Dobin, Chapter 11 Trustee and Frutta Bowls, LLC, Brooke Gagliano, Patrick Gagliano, Gagliano Enterprises, LLC and Frutta Bowls Distribution, LLC, Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019, and for Related Relief

IT IS ORDERED that the Trustee's Motion be and hereby is granted in its entirety; and it is further

ORDERED that the Settlement, as the term is defined in the Motion, and is as set forth in the Settlement Term Sheet and the Addendum annexed as **Exhibit "A,"** and with additional term providing that to the extent any distribution rights, known or unknown, belong to Distribution, then that right is hereby conveyed to the Debtor, is approved in its entirety pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019; and it is further

ORDERED that the Court shall retain exclusive jurisdiction with respect to any and all issues relating to the enforcement of the Settlement.

EXHIBIT “A”

This Settlement Term Sheet (“Term Sheet”) outlines the agreements by and among: (i) Frutta Bowls Franchising, LLC (“FBF” or the “Debtor”); (ii) Andrea Dobin, Esq., as chapter 11 trustee of the estate of Frutta Bowls Franchising, LLC (the “Trustee”); (iii) Frutta Bowls, LLC (“FBLLC”); (iv) Gagliano Enterprises, LLC (“GELLC”); (v) Brooke Gagliano (“B.Gagliano”); and (vi) Patrick Gagliano (“P.Gagliano,” and collectively with B.Gagliano, the “Gaglianos”). FBF, the Trustee, FBLLC, GELLC, and the Gaglianos are collectively referred to herein as the “Parties.”

1. Relevant Background.

1.1 FBF is a New Jersey limited liability company that has developed a franchise system for the promotion and assistance of independently owned and/or operated Acai fruit bowl shops designed to enable such stores to compete effectively in the applicable quick-service market. The Gaglianos are the sole members of FBF (B.Gagliano: 57%, P.Gagliano: 43%).

1.2 FBLLC is the owner of a system (“System”) relating to the establishment, development and operation of Frutta Bowls businesses including certain know-how, trade secrets, copyrighted material (registered or unregistered) and trademarks, including the service mark “Frutta Bowls” design (U.S. Reg. No. 5184834), word mark, “Frutta Bowl” (Serial No. 87593542 – application pending), and word mark “This is How I Frutta” (Serial No. 87574888 – application pending) and other unregistered trade names, trademarks, service marks, logos, trade dress, commercial symbols and proprietary rights (the various trademarks, hereinafter collectively, the “Marks”) (collectively, the “Frutta Bowls IP”). B.Gagliano is the sole member of FBLLC.

1.3 GELLC is the owner and operator of a Frutta Bowls licensed store located at 64 Village Center Drive, Freehold, New Jersey 07728 (the “Freehold Store”). B.Gagliano is the sole member of GELLC.

1.4 On February 15, 2019 (the “Petition Date”), FBF filed a voluntary chapter 11 bankruptcy proceeding with the United States Bankruptcy Court for the District of New Jersey, (the “Bankruptcy Court”), Case No. 19-13230 (MBK) (the “Bankruptcy Proceeding”). See ECF Doc. No. 1.

1.5 In its chapter 11 petition, FBF lists assets in the aggregate amount of \$593,337, and liabilities in the aggregate amount of \$762,643. Additionally, unsecured claims in the aggregate amount of \$10,914,610.27 have been asserted against FBF in the Bankruptcy Proceeding.

1.6 On January 27, 2020, FBF and the Official Committee of Unsecured Creditors in the matter of Frutta Bowls Franchising, LLC (the “Committee”) filed the *Frutta Bowls Franchising, LLC Combined Plan of Reorganization and Disclosure Statement Jointly Proposed by the Debtor and Official Committee of Unsecured Creditors* (the “Plan and Disclosure Statement”). See ECF Doc. No. 225. On January 28, 2020, The Bankruptcy Court entered an *Order Conditionally Approving Disclosure Statement, Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined with Notice Thereof and of the Hearing on Final Approval*

1.7 On May 8, 2020, FBF filed *Frutta Bowl Franchising, LLC's Motion to Convert from Chapter 11 Case to a Chapter 7 Case* (the "Conversion Motion"), wherein FBF requested that the Bankruptcy Court enter and order pursuant to 11 U.S.C. § 1112 converting its chapter 11 case to one under chapter 7 of the Bankruptcy Code. See ECF Doc. No. 294.

1.8 On May 15, 2020, the Committee filed a motion requesting that the Bankruptcy Court enter an order denying the Conversion Motion and appointing a chapter 11 trustee of FBF's chapter 11 estate (the "Trustee Motion"). See ECF Doc. No. 297.

1.9 By order dated May 22, 2020, the Bankruptcy Court entered an order denying the Conversion Motion and granting the Trustee Motion. See ECF Doc. No. 302. Additionally, the Trustee was appointed as chapter 11 trustee of FBF's chapter 11 estate by order dated May 22, 2020. See ECF Doc. No. 304.

1.10 The Trustee has alleged that there is a legal basis to assert ownership of the Frutta Bowls IP on behalf of FBF, and has demanded that B.Gagliano voluntarily transfer ownership of the Frutta Bowls IP from FBLLC to FBF's chapter 11 estate in order to consummate a sale of all or part of FBF pursuant to 11 U.S.C. § 363, which allegation is disputed.

2. Terms of Agreement.

2.1 FBLLC, by and through B.Gagliano, shall transfer all rights, title, and interest in the Frutta Bowls IP to FBF's chapter 11 estate.

2.2 The Trustee shall release and forever waive any and all claims or causes of action now known or hereinafter discovered that it may assert against the Gaglianos, FBLLC, and/or GELLC, either separately or jointly and severally, including, but not hereby limited to, all causes of action arising pursuant to chapter 5 of the Bankruptcy Code. The release contemplated hereby shall include all claims and causes of action that the Trustee may assert on behalf of FBF's chapter 11 estate and/or all claims and causes of action that any third party, to include the Committee, may assert derivatively against the Gaglianos, FBLLC, and/or GELLC.

2.3 GELLC, by and through B.Gagliano, and FBF shall enter into an agreement (the "GELLC Franchise Agreement") for the continued operation of the Freehold Store, under which GELLC shall operate the same as a Frutta Bowls store under the following terms:

2.3.1 FBF shall agree to waive the \$20,000 franchise fee for GELLC's operation of the Freehold Store;

2.3.2 GELLC shall agree to make monthly payments on account of GELLC's use of the Frutta Bowls IP equal to 5% of the Freehold Store's gross monthly sales, and pay the 1% advertising fee based upon sales;

2.3.3 The initial term of the GELLC Franchise Agreement shall be for a term of August 1, 2020 through September 30, 2021, to reflect the amount of time currently remaining on the Freehold Store's real property lease. At the conclusion of such initial term, GELLC shall have the option to renew the GELLC Franchise Agreement for an additional term as determined by GELLC and FBF, its successors or assigns; and

2.3.4 B.Gagliano shall not be required to execute a personal guaranty as a condition of entry into the GELLC Franchise Agreement or GELLC's operation of the Freehold Store.

3. Reservations.

3.1 Term Sheet. This Term Sheet sets forth the material terms of the agreement. The Parties will execute and deliver definitive agreements memorializing these terms and conditions. .

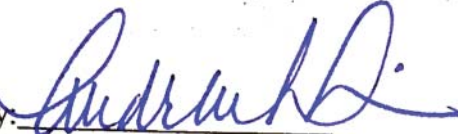
3.2 Construction of the Term Sheet. The Parties agree that the language of this Term Sheet is the result of ongoing negotiations between the Parties and, as a result, there shall be no presumption that any ambiguities in this document shall be resolved against any party. Any controversy over the construction of this Term Sheet shall be decided without regard to events of authorship or negotiation.

3.3 Bankruptcy Court Approval. This Term Sheet is subject to approval by the Bankruptcy Court in the Debtor's Chapter 11 Bankruptcy Proceeding.

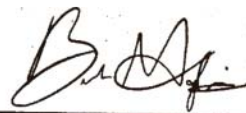
[SIGNATURES FOLLOW ON NEXT PAGE]

Agreed to and accepted by:

FRUTTA BOWLS FRANCHISING, LLC
Chapter 11 Debtor

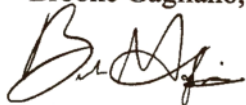
By: 
Andrea Dobin, Chapter 11 Trustee

FRUTTA BOWLS, LLC

By: 
Brooke Gagliano, Managing Member

GAGLIANO ENTERPRISES, LLC

By: 
Brooke Gagliano, Managing Member


BROOKE GAGLIANO,
Individually and on behalf of Frutta Bowls, LLC and Gagliano Enterprises, LLC


PATRICK GAGLIANO
Individually

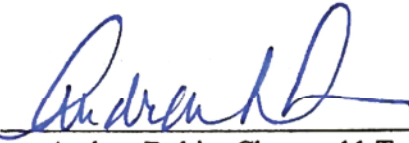
This Addendum to that Settlement Term Sheet (“Term Sheet”) by and among: (i) Frutta Bowls Franchising, LLC (“FBF” or the “Debtor”); (ii) Andrea Dobin, Esq., as chapter 11 trustee of the estate of Frutta Bowls Franchising, LLC (the “Trustee”); (iii) Frutta Bowls, LLC (“FBLLC”); (iv) Gagliano Enterprises, LLC (“GELLC”); (v) Brooke Gagliano (“B.Gagliano”); and (vi) Patrick Gagliano (“P.Gagliano,” and collectively with B.Gagliano, the “Gaglianos”). FBF, the Trustee, FBLLC, GELLC, and the Gaglianos are collectively referred to herein as the “Parties” dated July 10, 2020, is hereby amended as follows:

1. **Parties.** Included in the Parties is “Frutta Bowls Distribution, LLC,” a limited liability company formed under the laws of the State of New Jersey (“Distribution”). Distribution is non-operational and does not own any tangible or intangible assets.
2. **Section 2.2** of the Term Sheet is hereby amended to reflect the Parties, including Distribution, are exchanging mutual general releases, such that each of the Parties shall release and forever waive any and all claims or causes of action now known or hereinafter discovered that it may assert against the other, including all claims and causes of action that the Trustee may assert on behalf of FBF’s chapter 11 estate and/or all claims and causes of action that any third party, to include the Committee, may assert derivatively against FBLLC, GELLC, the Gaglianos and Distribution.
3. All other terms and conditions of the Term Sheet remain in full force and effect, and this Addendum is subject to Bankruptcy Court approval. It is intended to be filed as a supplement with the Court in connection with the Motion to approve the original settlement, as reflected in the Settlement Term Sheet.

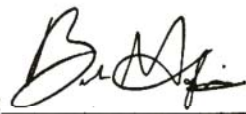
[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

Agreed to and accepted by:

FRUTTA BOWLS FRANCHISING, LLC
Chapter 11 Debtor


By: 
Andrea Dobin, Chapter 11 Trustee

FRUTTA BOWLS, LLC

By: 
Brooke Gagliano, Managing Member

GAGLIANO ENTERPRISES, LLC

By: 
Brooke Gagliano, Managing Member

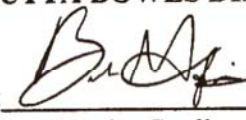


BROOKE GAGLIANO,
Individually and on behalf of Frutta Bowls, LLC and Gagliano Enterprises, LLC



PATRICK GAGLIANO,
Individually

FRUTTA BOWLS DISTRIBUTION, LLC

By: 
Brooke Gagliano, Managing Member